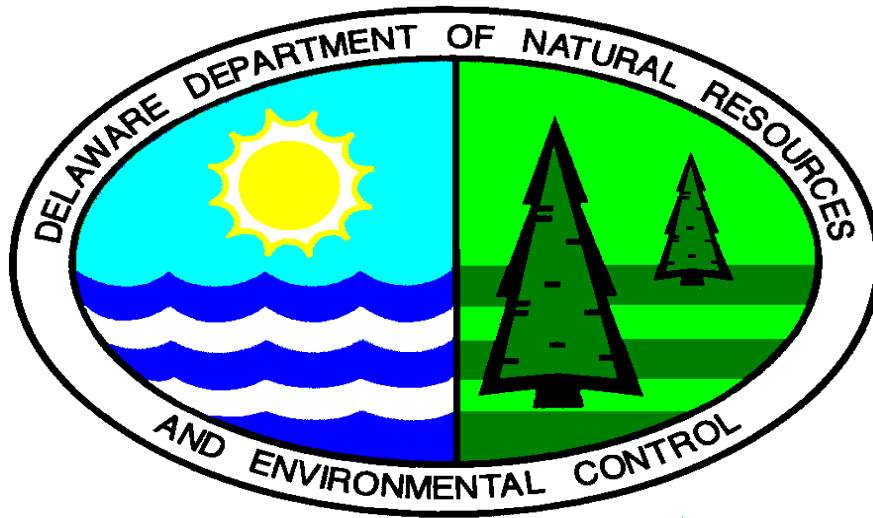


DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL  
DIVISION OF AIR & WASTE MANAGEMENT  
Site Investigation and Restoration Branch



**DELAWARE VOLUNTARY CLEANUP PROGRAM GUIDANCE**

**FEBRUARY, 1995**

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## **INTRODUCTION**

Delaware is one of a growing number of states to address, through statutes, the liability issues associated with buying, selling or developing property contaminated by hazardous substances. Because of the potential for liability as an owner of property contaminated with hazardous substances, property owners and other participants in property transactions (buyers, developers and their financial institutions) frequently need to determine if the property they are interested in is contaminated. For this reason, participants in property transactions often request the Delaware Voluntary Cleanup Program's (VCP's) assessment of technical issues that are part of the investigation and cleanup of property.

When contamination is discovered, participants in property transactions also want to know VCP's authority to take enforcement actions or to recover cleanup costs. Under the Hazardous Substance Cleanup Act of 1990, persons not otherwise responsible for the contamination at a property are eligible for future liability protection when they voluntarily undertake and complete response actions approved by the Secretary of the Department of Natural Resources and Environmental Control (DNREC or Department).

Property owners not currently interested in selling or developing property, may also voluntarily investigate and clean up property with the assistance from the VCP. Property owners may request assistance from the VCP in anticipation of future property transactions, to obtain financing or simply to avoid the high transaction costs associated with investigating and cleaning up property under the Superfund enforcement process.

## **VCP PROGRAM**

The VCP Program has been developed to assist the business community clean up property contaminated by hazardous substance release. The key functions of the VCP are to set standards for a site investigation, to provide review of the adequacy and completeness of site investigations and to approve cleanup plans to address identified contamination. By obtaining VCP approval of investigation and cleanup plans, landowners, lenders, and potential developers can be reasonably confident of the extent of environmental problems on the property, can determine the most appropriate cleanup action and can calculate the cost of cleanup measures needed to satisfy VCP requirements. The voluntary investigation and cleanup process provides the information needed to make sensible financial decisions about developing or transferring contaminated or potentially contaminated property.

Implicit in the voluntary nature of the VCP Program is the recognition that voluntary parties have a choice to participate or not participate in the VCP Program. Thus, a voluntary party can terminate their participation at any point by written notification to DNREC.

If a voluntary party decides to terminate their participation in the VCP Program and the voluntary party is not otherwise a responsible party, as defined by the Hazardous Substance Cleanup Act (HSCA), the VCP will not take further administrative action to mandate future investigation or cleanup by the voluntary party. However, if the voluntary party is the owner of the property or otherwise determined to be liable pursuant to HSCA, they will be required to cooperate with the HSCA Program at a future date to investigate and if necessary cleanup the property. VCP parties who elect to discontinue participation in a site investigation or cleanup must ensure that no additional environmental hazards exist at the site as a result of actions taken by the party.

The voluntary nature of the VCP Program benefits owners, real estate sellers, real estate purchasers, lending institutions and developers. At the same time, the voluntary nature of the VCP Program benefits the environment and the public interest by the resulting identifications and cleanup of contaminated property.

The Voluntary Cleanup Program is being implemented under the authority of Hazardous Substance Cleanup Act (HSCA) 7 Del. C. Chapter 91.

## **VOLUNTARY CLEANUP PARTY REQUIREMENTS**

Parties seeking assistance under the VCP Program are expected to adhere to certain standards in the investigation of contamination on a property, the evaluation and recommendation of response actions, and the level of cleanup attained. Parties entering into the Voluntary Cleanup Program may choose to conduct the investigation and evaluation of response alternatives on their own, before they seek the Department's assistance in oversight of the cleanup activities. All the information gathered and evaluation performed must be submitted along with the workplan under the Voluntary Cleanup Program Agreement, discussed later.

To help meet these expectations and provide useful direction to voluntary parties, the VCP has developed or adopted various guidance documents. The guidance documents provide information about the VCP Program and describe the phased approach for conducting an investigation and any necessary response actions. The guidance documents include:

- Delaware Voluntary Cleanup Program Guidance, February, 1995
- Hazardous Substance Cleanup Act Guidance Manual, October, 1994
- State of Delaware, Department of Natural Resources and Environmental Control Standard Operating Procedure for Chemical Analytical Programs, July, 1994
- Minimum Qualifications Requirements for Consultants/Contractors performing work under the Delaware Hazardous Substance Cleanup Act, June, 1994
- Delaware Regulations Governing Hazardous Substance Cleanup, April, 1995

- Interim Guidance on Reporting Levels for Hazardous Substances Discovered During Site Assessments Under the Delaware Hazardous Substance Cleanup Act - October, 1995
- Delaware Voluntary Cleanup Program Application Form

The data generated during each phase of a VCP Site Investigation will assist the voluntary party in determining the types of information needed during the next phase. The guidance documents provide the necessary information to determine the nature and extent of contamination, select cleanup levels and prepare for approval the response action plan for the site by DNREC. Following the guidance documents listed above, during the investigation and study conducted by the parties before their entry into the VCP, will expedite VCP staff review of documents submitted by the parties to determine whether response actions at a property are required.

### **VCP SITE ELIGIBILITY REQUIREMENT**

The VCP is primarily designed to address properties which are being evaluated for transaction or redevelopment and properties where an immediate threat to human health and the environment is not posed. For a site to be eligible for cleanup under VCP, it may have to meet certain requirements. DNREC, solely at its discretion, may decide that a site is not eligible for cleanup under VCP if: 1) A property has contamination detected in the soil or groundwater media at a risk value greater than a cancer risk of  $10^{-4}$  or a hazard index of 10 or greater; 2) a public/domestic water supply well on the property is contaminated at or above either the Maximum Contaminant Level (MCL); a cancer risk of  $1 \times 10^{-5}$  or a hazard index = 1; 3) a property has either groundwater or soil contamination located near a public/domestic well (i.e. 300 feet to a public well, 150 feet to a domestic well) which the VCP determines has the potential to contaminate the well; 4) the contamination from a property impacts the surface water which is used as a drinking water source and MCLs are exceeded; 5) the contamination from a property impacts surface water quality and an exceedance of at least one order of magnitude of the State of Delaware Surface Water Quality Standards is determined; and 6) a property is subject to RCRA corrective action or for any other reason which must be documented in writing to the applicant.

Properties which do not meet the VCP site eligibility criteria may be referred to the enforcement program under HSCA. Referral of a VCP site to the enforcement program may also take place if the voluntary party chooses to discontinue participation in the VCP Program and the property is the site of a release or potential release of a hazardous substance. Finally, referral could take place if it becomes evident that the voluntary party is unable to continue or demonstrates a lack of cooperation in dealing with the VCP staff, or is not completing the necessary investigation activities and response actions in a timely manner. Parties will generally be given only one opportunity to demonstrate their cooperation by volunteering to conduct the necessary investigation and response actions at a site under VCP.

### **VOLUNTARY CLEANUP PROGRAM APPLICATION**

Parties who wish to perform an environmental investigation and cleanup of a property must fill out a VCP Application Form. The VCP Application Form is used by the VCP program to assist parties in determining whether or not remedial activities are warranted at their respective sites and if it is necessary to request a Voluntary Cleanup Agreement. If remedial actions are required at a party's site, a Voluntary Cleanup Program Agreement will have to be executed. The completed application should be sent to:

Department of Natural Resources and Environmental Control  
Division of Air and Waste Management  
Site Investigation and Restoration Branch  
391 Lukens Drive  
New Castle, DE 19720

Attention: SIRB Manager

Phone: (302) 395-2600

Applicants must respond fully and completely to all the questions and information requested in the Voluntary Cleanup Program Application. To the degree possible, all the applications will be reviewed by DNREC on a first come, first serve basis and responded to within 30 days after receiving the completed Voluntary Cleanup Program Application. DNREC may not process a Voluntary Cleanup Program Application unless all requested information is complete and all questions are answered to its satisfaction.

For additional information regarding the VCP site application process refer to the Delaware Voluntary Cleanup Program Application.

## **VCP AGREEMENT**

Once an applicant has completed the VCP application process and has been approved to enter the VCP, the party may elect to enter into a VCP Agreement with DNREC.

DNREC has developed a legal agreement for persons who request its assistance and oversight during site investigations and cleanups. The VCP Agreement has been structured to reflect the voluntary nature of a person's involvement in the program.

Key provisions of VCP Agreements, among others, are

- A requirement to conduct property cleanups in accordance with the HSCA regulations.
- A requirement to adhere to all applicable Federal, State and local laws and regulations.
- A requirement for DNREC staff access and oversight.
- Reimbursement of DNREC staff oversight costs by the voluntary party. (DNREC can provide an estimate of oversight costs.)
- A Hold Harmless clause.
- An Agreement Termination Clause for both the Department and the volunteering party; and
- A provision to indemnify the State

VCP Agreements will not include, among other things:

- Provisions for stipulated penalties for non-compliance;
- Provisions for public notice of the agreement
- Dispute Resolution clause during the Remedial Investigation/Feasibility Study (RI/FS). A modified VCP agreement is available during the Remedial Design/Remedial Action (RD/RA) phase, if the volunteer requests the inclusion of Dispute Resolution procedures in the agreement.

VCP parties may elect to withdraw from the VCP Agreement. Under such circumstances the Department may list the property in the “inventory” of sites that need further investigation. A site undergoing cleanup under VCP will not be included in the Inventory of sites addressed under HSCA or the State Priority List.

## **VCP SITE INVESTIGATION PROCESS**

After signing the VCP agreement and payment of a deposit (up to \$5,000) for oversight cost to the Department, the voluntary party will submit the name of the consultant and the laboratory for the Department’s approval. The approved consultant and the laboratory will be provided with copies of the HSCA regulations, and other applicable guidance documents and policies.

After the approval of the consultant, based on the policy on “Minimum Qualifications Requirements for Consultants/Contractors under HSCA” and the laboratory, based on HSCA “Standard Operating Procedure for Chemical Analytical Program,” the VCP party will submit a workplan for the investigation and study for the Department’s approval. Along with this workplan, the VCP party must submit information on all previous investigation and study conducted by the party for the Department’s approval and acceptance. The Department will take into account and give credit for all previous investigation and study by the voluntary party if these meet the standards under the existing guidelines, policies, and procedures of the Department. The workplan must identify all the data and information available, data gaps that need to be filled and additional studies required for the preparation of a proposed plan for remedy. The Department reserves the right to reject all previous investigation and study done, if

they do not meet its guidelines, policies and procedures. Following completion of the workplan, the investigation and cleanup of the property will proceed according to the schedule agreed upon by the DNREC and the applicant. The investigation and cleanup of a VCP site will adhere to the HSCA regulations and guidance documents.

A voluntary party may also choose to sign a VCP agreement after the approval of the consultant, laboratory and the focused RI/FS workplan. If the voluntary party chooses to take this approach the party must sign a letter agreement after the approval of the application, and make a deposit (up to \$5,000) towards the cost of the Department's oversight up to the signing of the VCP agreement.

All deposits/advance payments towards oversight costs will be deposited in a special account. Monies will be drawn against this account based on the actual oversight expenses incurred. Any balance remaining at the end of the activity will be refunded to the voluntary party.

## **SOIL AND GROUNDWATER SCREENING LEVELS:**

In an effort to streamline the investigation and cleanup of properties, DNREC has developed screening levels for soil and groundwater media contaminants. Screening Levels have been developed for both residential and industrial/commercial land use settings. The screening levels are derived from the Interim Guidance on Reporting Levels of Hazardous Substances Discovered During Site Assessments Under the Delaware Hazardous Substances Cleanup Act, October 1995, (Reporting Levels). These levels have been developed for 107 chemicals. For chemicals not included the Reporting Levels, screening levels may be obtained from the EPA, Region III Risk-Based Concentration Tables. These tables contain an additional 500 chemicals.

Screening levels are used as guidance to screen out properties from further investigation and/or to initiate investigations. Properties which have contaminant concentration values above the trigger levels will be required to perform an environmental investigation consistent with HSCA Regulations and Guidance. Properties with limited contaminants, which have completed an environmental investigation under DNREC oversight and discovered that contaminant levels are below screening levels in both the soil and groundwater media may receive a "No Further Action" letter from the Department.

Screening levels have been developed based upon a carcinogenic risk of  $1 \times 10^{-6}$  or a chronic non-carcinogenic risk of unity (i.e. Hazard Index = 1) and the leachate potential of the contaminants into the groundwater. Screening levels for individual contaminants are based on the lower value of the carcinogenic/non-carcinogenic risk value or the value of the contaminant when leached into the groundwater may cause an exceedance of drinking water standards.

In an effort to further streamline the VCP process, DNREC at its discretion, may allow voluntary parties to clean up properties to screening levels in lieu of performing a health-based risk assessment in accordance with HSCA Regulations. Cleanup of the soil to a industrial/commercial screening level is determined by the Department on a case by case basis.

Screening levels for soil can be modified, if necessary, to account for potential groundwater contamination.

## **PUBLIC PARTICIPATION**

Public participation at VCP sites will be consistent with HSCA and the Regulations. When an environmental investigation and the study of remedial alternatives are completed at a property, the VCP program provides notice to the public in the form of a publication in a local newspaper which describes the plans for cleanup of the property. The public is given a minimum of twenty (20) days to comment on the plan for property cleanup, and the public can request a hearing to review the plans to cleanup a property. Voluntary Cleanup parties are encouraged to take an active role in informing the public of their plans and actions. Additional information regarding public participation requirements is available in the HSCA Guidance Manual.

## **WRITTEN ASSURANCES**

Parties which undertake a VCP investigation and cleanup of a property can obtain a written assurance from the Department. DNREC will issue a Certificate of Completion of Remedy to the VCP party once the cleanup of a property has been completed to the Department's satisfaction.

The VCP program also provides the prospective purchaser of a site with contribution protection from liability under 7 Del. C., Chapter 91, HSCA, if the purchaser signs a Consent Decree with the Department and provides assurances on the cleanup of the site.

## **TIME TO COMPLETE THE VCP PROCESS**

Parties who are considering requesting assistance from the VCP program to investigate and cleanup a property contaminated with a hazardous substance frequently want to determine the length of the time to complete the VCP process. The length of time needed to complete the VCP process will vary depending upon two factors, the amount of previous site investigation and the complexity of the site problems. VCP parties who elect to perform environmental investigations of a property in accordance with VCP Guidances, but without VCP staff oversight will normally realize a reduction in the time to complete the VCP process. If a cleanup of a property is determined to be necessary, the time needed to complete the cleanup will be dependent on the volume of waste needing to be remediated and the complexity of the cleanup process.

The VCP staff will make every effort to review and respond to documents within 30 to 45 days following submittal or within a mutually agreed upon time frame.

## **COST TO USE THE VCP PROGRAM**



The VCP program is designed to be fully self-supported. Persons seeking assistance from DNREC under the VCP program for the environmental investigation and cleanup of property are required to reimburse the VCP for the costs of providing assistance. Normally a \$5,000 advance deposit is requested of a party once a staff representative is assigned to the project. The advance deposit is used to cover the cost of negotiating the VCP Agreement, negotiating an environmental investigation or cleanup workplan, and overseeing the work performed at the site. In the event that the VCP program draws down the initial \$5,000 deposit, additional costs for oversight and assistance will be billed to the VCP party on a quarterly billing cycle.

Because of the amount of time required to provide oversight by the staff will vary for the reasons described above, it may not be possible to provide a specific total cost figure for VCP program assistance at a site. The program will, however, provide an estimate of the cost to oversee an environmental investigation or cleanup. The hourly rate charged by the program for project oversight ranges between \$45.00-\$65.00 per hour. Overhead costs are included in the hourly rate.

If a party decides to exercise the agreement termination provision, the balance of the initial deposit will be refunded within 30 days of receipt of the letter of termination.

## **REPORTING OF SITE CONTAMINATION**

DNREC has developed contaminant reporting guidelines for hazardous substance releases. These guidelines are contained in the Interim Guidance on Reporting Levels for Hazardous Substances Discovered During Site Assessments Under the Delaware Hazardous Substance Cleanup Act (Reporting Levels). Contaminant reporting levels have been established for the groundwater, or soil media.

Reporting levels have been computed utilizing a standard risk assessment methodology developed by the United States Environmental Protection Agency (US EPA) for the Superfund Program. Reporting levels have been developed based upon a carcinogenic risk of  $1 \times 10^{-6}$  or a chronic non-carcinogenic risk of unity (i.e. Hazard Index = 1) and the leachate potential of the contaminants into the groundwater. Reporting levels for individual contaminants are based on the lower value of the carcinogenic/non-carcinogenic risk value or the value of the contaminant when leached into the groundwater may cause an exceedance of drinking water standards

Reporting levels have been developed for 107 chemicals commonly encountered at hazardous waste sites. Contamination detected in exceedance of the thresholds established in the Reporting Levels may be reported as soon as practicable by the owner of the property to the Superfund Branch of DNREC.

## **ADDITIONAL INFORMATION**

For additional information regarding the Delaware's Voluntary Cleanup Program, please contact the Superfund Branch at (302) 395-2600 or write to:

Site Investigation and Restoration Branch  
391 Lukens Drive  
New Castle, Delaware 19720

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